

¹ This Court’s ruling denying compassionate release was summarily affirmed by the Third Circuit. *United States v. Figueroa*, 850 F. App’x 818 (3d Cir. 2021).

For six months beginning in late 2020, Figueroa complained of abdominal pain, nausea, and constipation, and presented a significant loss of weight. A scan was performed on April 15, 2021, which revealed B cell lymphoma. He started chemotherapy on May 2, 2021, and spent time in the hospital. He began radiation treatment in October 2021. Recent medical notes suggest that he is doing well. He is taking Rituxan, which is a form of immunotherapy, and is scheduled to take that treatment for two years. He continues to engage in all ordinary activities of daily living.

He has not been diagnosed with a terminal condition, though of course there is reason for concern. According to the National Institute of Health, the survival rates for persons with b-cell lymphoma being treated with Rituxan generally range from 28% to 68%.² Further, while Figueroa has been fully vaccinated against COVID-19 (his most recent Pfizer booster was on August 27, 2021), there is a higher risk of infection and illness for a person receiving immunotherapy.

Notwithstanding these circumstances, this Court's conclusions on November 4, 2020, suggest that relief should still be denied. As this Court explained, Figueroa is not only serving a life sentence imposed in this district for attempting to import a massive amount of cocaine on behalf of an international drug trafficking cartel, but also has served just over half of a concurrent 262-month sentence imposed in the Eastern District of New York for his participation in another large drug trafficking conspiracy while in

² See *Impact of Rituximab (Rituxan) on the Treatment of B-Cell Non-Hodgkin's Lymphoma*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2844047/#:~:text=The%20ORR%20of%2068%25%20included,in%20patients%20with%20relapsed%20DLBCL>.

federal prison. Figueroa would require relief in both cases in order to be released. In the New York case (E.D.N.Y. no. 04-515-07), on November 23, 2020 (ECF 638), United States District Judge Kiyo A. Matsumoto denied a motion for compassionate release, adopting the reasoning of this Court. Figueroa has not renewed a request for relief in that court.

In all of these circumstances, there is not a sufficient basis to change this Court's judgment that relief is not warranted upon consideration of all relevant factors, including those stated in 18 U.S.C. § 3553(a).³ With respect to his medical condition, he is receiving comprehensive care in BOP custody; he does not currently present a terminal illness, or show that he is unable to provide self-care in the institution. *See* U.S.S.G. § 1B1.13 app. note 1(A) (providing guidance regarding circumstances supporting compassionate release). And while COVID-19 presents a risk, that is true in the community as well, while BOP continues to engage in strenuous efforts to mitigate the risk, through a comprehensive vaccination program and numerous changes in prison management.⁴

³ Consistently, on January 30, 2019, even though the government supported Figueroa's motion at that time for a reduction of his sentence from life imprisonment to 360 months, under Section 404 of the First Step Act, this Court denied that relief, upon assessment of the nature of Figueroa's serious criminal conduct. *See* ECF 76.

⁴ Figueroa is held at FMC Butner, a medical facility. Of the 800 inmates there, 7 are currently reported positive for COVID-19 and are isolated as they recover.

At present, with respect to COVID mitigation measures, BOP assigns an operation level (Level 1 ("minimal modifications"), Level 2 ("moderate modifications"), and Level 3 ("intense modifications")) based on the institution's COVID-19 medical isolation rate, the combined percentage of staff and inmate completed vaccinations series, and the

The government therefore submits that the new motion should be denied, though Figueroa should alert the Court if there is any change in his condition or prognosis that should warrant further assessment.

Respectfully yours,

JENNIFER ARBITTIER WILLIAMS
United States Attorney

/s Robert A. Zauzmer
ROBERT A. ZAUZMER
Assistant United States Attorney
Chief of Appeals

/s Robert J. Livermore
ROBERT J. LIVERMORE
Assistant United States Attorney

transmission rate in the surrounding county. This assessment is reviewed daily. The entire Butner complex, that also includes a low-security institution and two medium-security institutions, is presently at Level 2. A great deal of specific information regarding the criteria for each operation level, and the mitigation measures employed at each level, is presented at https://www.bop.gov/coronavirus/covid19_modified_operations_guide.jsp.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this pleading has been served by first-class mail,
postage prepaid, upon:

Mr. Jorge Figueroa
44617-066
FMC Butner
P.O. Box 1600
Butner, NC 27509

/s Robert J. Livermore
ROBERT J. LIVERMORE
Assistant United States Attorney

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